

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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IESTER COWANS,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 07-2190 JPM-dkv
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

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ORDER ADOPTING REPORT AND RECOMMENDATION;  
ORDER REVERSING COMMISSIONER'S DENIAL OF PLAINTIFF'S CLAIM; AND  
ORDER REMANDING CASE

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Before the Court is the Report and Recommendation (DE # 12) of Magistrate Judge Diane K. Vescovo, submitted on October 10, 2007, recommending that this case be reversed and remanded. The Report and Recommendation addresses Plaintiff's Appeal from a decision of the Commissioner of Social Security denying Plaintiff's claim for disability insurance benefits under Titles II and XVI of the Social Security Act. The Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety, REVERSES the Commissioner's denial of Plaintiff's claim, and REMANDS the case for the purposes discussed infra.

The Magistrate Judge found (1) that the administrative law judge's ("ALJ") decision did not give proper weight to the medical opinion of Dr. Marc J. Mihalko (Dr. Milhalko), Plaintiff's treating orthopedist; (2) that the ALJ's decision to

not give Dr. Milhalko's medical opinion controlling weight was not supported by substantial evidence; (3) that the ALJ's decision to give the two non-treating, non-examining state agency medical consultants' opinions more weight than Dr. Milhalko's opinion was not supported by substantial evidence; (4) that the ALJ's decision improperly relied upon a vocational assessment by a state agency consultant, which in turn improperly relied upon the Physical Residual Functional Capacity Assessment of the two non-treating, non-examining state agency medical consultants; and (5) that the ALJ failed to consider, without justification, Plaintiff's non-exertional limitations caused by Plaintiff's pain and by the side effects of Plaintiff's pain medications.

The Magistrate Judge recommends that the case be reversed and remanded so that the ALJ may (1) properly evaluate and give appropriate weight to the medical opinion of Plaintiff's treating physician; (2) obtain a new vocational evaluation; and (3) reassess the severity of Plaintiff's non-exertional limitations caused by her pain and by the side effects of her medication.

No objections to the Report and Recommendation have been filed, and the time for filing objections has since expired. Upon de novo review of the Magistrate Judge's recommendation, the Court ADOPTS the Magistrate Judge's Report and

Recommendation in its entirety, REVERSES the Commissioner's denial of Plaintiff's claim, and REMANDS the case so that the ALJ may (1) properly evaluate and give appropriate weight to the medical opinion of Plaintiff's treating physician; (2) obtain a new vocational evaluation; and (3) reassess the severity of Plaintiff's non-exertional limitations caused by her pain and by the side effects of her medication.

So ORDERED this 15<sup>th</sup> day of November, 2007.

/s/ JON P. McCALLA  
UNITED STATES DISTRICT JUDGE